Members of the Entering Class: Tonight marks a special experience for you as you enter the University of Chicago Law School. I admire your Law School. Two of the finest lawyers with whom I’ve worked were educated here. Owen Fiss learned to teach here. Today he’s exciting students at Yale. John Labovitz, a 1969 graduate, was one of your most outstanding students. John is finishing a book on presidential impeachment.

As you study law at Chicago, you will examine constitutional principles which restrain or limit the power of government. Your orientation will be toward such subjects as separation of powers or the right of an individual to a hearing before the government can act in a way that has, for him, adverse consequences.

There is one dimension of constitutional law that may not receive as much attention from your professors. I have the impression that law schools do not spend much time teaching law students the beauty of making our constitutional system into an effective government.

The entire thrust of the Constitution was not to limit power. The framers believed that the diffused power of the legislative, executive, and judicial branches could be melded into a workable government.

I think it is important for you as law students to understand the roles and responsibilities of each of the three branches of government and the achievements that are attainable when the three

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In the fall of 1975, Mr. Doar was the first Ulysses S. and Marguerite S. Schwartz Visiting Fellow. The Fellowship is supported by a fund honoring the late Chicago jurist and his wife. Judge Schwartz, who died in December of 1973, served as alderman of the old 44th Ward from 1916 to 1925. In 1939 he was elected judge of the Superior Court, and in 1950 he was elected to the Illinois Appellate Court.

During Mr. Doar’s two-day visit to the Law School, he led a colloquium, and met with the faculty, attended classes, and had frequent informal sessions with students. This speech was delivered to the entering class on October 1, 1975, at the beginning of Mr. Doar’s visit.
branches each meet their responsibilities and at the same time work together to carry out a national purpose. I think it important for you, by the time you become lawyers, to appreciate that lawyers, as craftsmen, can help to bring this about.

If you agree, from time to time during your law school careers, you may wish to turn the sphere of constitutional law around and examine it from this direction.

One way to examine this dimension of constitutional law is to study the effort of the Federal Government to uphold the Constitution, from the passage of the 1957 Civil Rights Act through 1968, about the end of the first phase of the enforcement of the 1965 Voting Rights Act. To begin, you will need some examples.

I can furnish the examples because during most of those years I worked in the Civil Rights Division of the Department of Justice.

In 1957 the Congress passed the first civil rights legislation in almost 100 years. The statute authorized the Attorney General of the United States to bring civil actions in the Federal District Courts for preventive relief, including an application for a permanent or temporary injunction, against public officials who were practicing racial discrimination in registration or voting, and against anyone, public official or private citizen, who interfered with registration or voting by threats, intimidation, or coercion by any means.

Three years later, in April, 1960, I joined the Civil Rights Division of the Department of Justice.

The first case I worked on was in Haywood County, located in southwestern Tennessee, almost adjacent to the Mississippi border. Haywood County is more like the Mississippi delta than Tennessee—that is, large cotton farms, with black citizens comprising a majority of the voting age population.

Late in the fall of 1959 a group of rural blacks formed a Civic Improvement Association. This Association was dedicated to the improvement of the lot of the Negro in Haywood County. Once founded, meetings were held and thereafter blacks began to try to register. Immediately the whites retaliated with economic coercion. Credit was cut off. Supplies were withheld. In some instances, jobs were lost. In August, 1960, the Government filed suit. Soon thereafter I went to Haywood County to take depositions of some of the defendants.

Haywood County is full of oak trees, red clay, cotton fields, eroded landscapes. There I saw my first white southern sheriff—Taylor Hunter. When he appeared for his deposition I asked him his name. He told me. Then I asked, did he know that prior to 1960 no Negroes had registered to vote in Haywood County? He refused to answer on the grounds it would tend to incriminate him. He did it as if he were an old southern soldier, reciting from memory the pledge of allegiance to the flag. With him, dressed in blue suit, dark tie, white shirt, was Attorney Gray talking about the problems of the poor in southern America. There was a farmer named Scott who thought I was related to the Indiana comedian Herb Shriner. Lawyer Mooney was from Memphis. He bashed in the greater glory of Notre Dame's football teams and kept telling his witnesses to "Take the Fourth."

We were asked to go out to several rural churches for meetings to talk with some share-croppers. I will never forget those meetings. They were held at night in churches beside country roads. We would come into a dimly lighted church; we would walk to the front of the church. Eighty, ninety, one hundred black men and women would be waiting in the church pews. I would tell them that I was from the Department of Justice and was there to help them. Without expecting many to respond, I asked how many had received notices to get off the land. The hands of almost every one in the church went up. We learned that some of the families had lived on their places all their lives and that they or some member of their family had recently tried to register to vote.

We returned to Washington determined to do something to help these people. Our theory was that if we could lay out the facts fully and completely the law would take hold and effectively correct such injustice.

We amended our complaint, added 33 landowners who had served the eviction notices as additional defendants, obtained 57 sworn affidavits from the black sharecroppers, added pictures and moved for a preliminary injunction.

Let me read to you from one of the affidavits:
I, Hallie Powell, being first duly sworn, say: I am 43 years old; I reside in Civil District No. 8, Haywood County, Tennessee, on the place of Mr. John T. Gillespie, who owns a large farm in Haywood County. I have lived on the farm about 14 years as a sharecropper on a third basis. My wife and 5 children, 4 of whom are in school in Haywood County, live with me. In the past years I never had much discussion with Mr. Gillespie about staying on. We just carried on as we had from year to year. No new arrangement was made and we never had any trouble about my farming for him. I registered to vote in Haywood County on June 6, 1960. On June 7th, Mr. Gillespie met me in the road up by my place. He said, "I haven't had a chance to talk with you. I know you have been up there several times to try to register." I said yes I had. He said, "I don't know; you all suit yourself. I would advise you not to register." I did not tell him that I had registered. He came back that evening and said he wanted to talk to me some more about that registering. I said, "Mr. Gillespie, I'd already registered." He said, "Well, then, I will tell you just like I told J. W., you will have to hunt yourself a house." I asked him why, what was the matter. He said, "Well, you know the colored people haven't registered here before and they are telling me they are aiming to register and try to take over the county." And I told him, "I don't see why no one would try and take something that don't belong to them." I said, "I have talked to several ones on this occasion and none of them had said they wanted anything but what belongs to them." Sometime in July I got a registered letter from him telling me I would have to get off at the end of the year. I have done traded for next year with Mr. C. W. Rawls, a negro, but its nowhere near as good a place. There is not as much cotton. It is only 10 acres where I had 30 acres for Mr. Gillespie. My only means of support is farming. I have talked to several ones on this occasion and none of them had said they wanted anything but what belongs to them.

Hallie Powell, Affiant.

We went to speak to Federal Judge Boyd in Memphis. He finally set a hearing three days before Christmas.

We subpoenaed all the sharecroppers and some other witnesses. None of the court officials would provide the blacks a place to sit; many were forced to wait on benches among the furnace pipes in the basement of the Federal court house. Finally we were permitted to put on our case.

We were not able to accomplish very much. The evictions that winter were cruel and savage things, but the Federal District Judge refused to halt them. We did appeal to the Court of Appeals and on December 30 secured an injunction pending appeal. But the case went back and forth and our efforts had no lasting corrective impact.

We did learn the value of preparation, the utility of an injunctive suit and a motion for preliminary injunction. We did come to appreciate the necessity of speed. That was nowhere near enough.

We decided we had to help the executive and judicial branches of the Federal Government work together. At that time, we did not understand how important it was that the Congress as well be involved.

We began to bring voter discrimination suits in the various district courts in the States of Louisiana, Mississippi and Alabama. Our purpose was to educate the executive and judicial branches to the facts. We included in this assignment the Department of Justice, the U.S. Attorneys' offices, the FBI, the White House, and within the judicial branch, the various district judges, their court families and the Court of Appeals. Our strategy was to persuade the Federal courts to enforce the law.

Two and one-half years later we had an example of the success and the limits of this approach. In the litigation involving James Meredith and the University of Mississippi, I sat in a court room in New Orleans listening to Judge Tuttle, Chief Judge of the Fifth Circuit, tell Burke Marshall, the Assistant Attorney General for Civil Rights, that:

the record in the case will demonstrate that this Court has moved as expeditiously as it has been possible for the Court to move, because the Court has considered that . . . if
there be a right to obtain a college education, (it) expires of its own term within a reasonably short time.

Judge Tuttle added:

I think I do state the views of the Court that the Court has practically exhausted its powers in the circumstances. I am sure it is a planned policy of our Government that a court have no power to execute its orders. . . . The Court feels that the time has about come, when the burden now falls on the Executive Branch of the Government. Now, Mr. Marshall, will you indicate, if you can, what can be done by the Executive Department to see that the Court's orders are carried out.

Showing great sensitivity to the thought required for the effective exercise of executive power, Assistant Attorney General Burke Marshall replied:

We recognize the responsibility of the Executive Branch of the Government to enforce the orders of the Court. We also have a responsibility to make every effort to enforce the orders of the Court in a way that is least disruptive of the national interest. When we are dealing with a state, we want to give the state every opportunity to cooperate with the Court and the Federal Government in seeing that the orders are obeyed. . . . We have attempted to proceed in a responsible fashion, giving every opportunity first to the University and then to the Government of the State of Mississippi to meet their responsibilities.

Mr. Marshall at the same time made it clear that the Executive Department understood its responsibility and that that responsibility would be exercised. What Burke Marshall said illustrates the importance of straightforwardness and clarity in committing the use of the executive power:

Now, . . . despite every attempt that we have made to have the order of the Court respected and obeyed voluntarily, those efforts have thus far failed. . . . It appears that
stronger efforts are going to have to be made to enforce the order of the Court. There is no question but that the executive branch of the government will use whatever force, physical force, is required, if that is required, to enforce the order of the Court. . . . That task will be easier and the country will be better off if by the order of this Court we can yet bring the state officials to a recognition of their responsibilities to cooperate with us instead of opposing us in accomplishing this purpose.

Thereafter, James Meredith did attend the University of Mississippi. This was accomplished with great difficulty, but it was accomplished. But that is not my only point. The case also illustrates the exceptional craftsmanship of one lawyer, Burke Marshall, in assisting the judicial and executive branches to meet their constitutional responsibilities.

During the early years of the 1960’s Congress was not involved in the Government’s effort to eliminate the caste system. This changed with the passage of the 1964 Civil Rights Act. The significance of this change can be appreciated by examining the history of the Voting Rights Act of 1965.

Between March 16, 1965, when President Johnson first went before a joint session of the Congress, and June, 1966, the three co-equal branches of the Federal Government worked independently but in harmony to make the Fifteenth Amendment mean what it says.

The way President Johnson used the Presidency, the way the Justice Department presented evidence to the Congressional committee, the way Congress drafted the bill, the way Congress acted, the way the President, the Justice Department and the Civil Service Commission enforced this law, the way the Supreme Court quickly decided the law’s validity, and finally the way blacks were able to actually vote, and have their votes counted, were living proof of how the three co-equal branches of the Government could work together.

In every instance what was accomplished was imagined, developed, and implemented by lawyers as craftsmen assigned to support the three co-equal branches of the Federal Government.

Let me summarize briefly the history of the first year after the Act was passed:

The Act was given meaning on the day of the signing ceremony. There President Johnson set the tempo when he said:

“. . . I intend to act with dispatch in enforcing this Act.

“. . . Tomorrow at 1:00 p.m. the Attorney General has been directed to file a lawsuit challenging the constitutionality of the poll tax in the State of Mississippi.

“. . . By Tuesday morning, trained federal examiners will be at work registering eligible men and women in 10 or 15 counties.

“And on that same day, next Tuesday, additional poll tax suits will be filed in the States of Texas, Alabama, and Virginia.”

On the Monday following the passage of the Voting Rights Act, the Civil Service Commission announced that registration offices would be open in nine counties in three states. On the first day that these offices were open 1,144 blacks registered. During the first week, 9,845 blacks registered. By the first of the year there were 36 counties where Federal officials were operating and 79,815 blacks had been registered. During the same period local officials in the five states of the deep south registered 215,000 blacks—the direct result of voluntary compliance by local officials.

This compliance did not occur by chance. Considerable efforts were made to bring this about. On the day following the passage of the Act, Attorney General Katzenbach, a former University of Chicago Law School teacher, wrote to the 650 registration officials subject to the Act. He explained the provisions of the statute and told them that his decision to appoint examiners would be made when it was clear that past denials of the right to vote justified it, or where present compliance with Federal law was insufficient to assure prompt registration of all eligible citizens.

During that first year FBI agents checked voter registration books in every county for the five-state area on a weekly basis. Young attorneys in the Civil Rights Division, most of them under 30, spent long days in rural counties in the south
explaining the law to local officials and to Negro citizens and bringing situations of noncompliance to the attention of the Attorney General.

On January 8, 1966, the Attorney General sent another letter to every registrar in the six states covered by the Act explaining once again in detail his criteria for the appointment of Federal examiners.

On March 7, 1966, the Supreme Court upheld the validity of the Voting Rights Act. Again it was Attorney General Katzenbach who used his skill as a lawyer to bring this about. Shortly after the passage of the Act, Attorney General Katzenbach applied to the Supreme Court for leave to file three original actions against Alabama, Louisiana, and Mississippi. In due course, the Supreme Court entered an order expediting consideration of the applications. Shortly thereafter it denied the Attorney General’s application, but granted leave of the State of South Carolina to file an original action against Katzenbach and set an expedited schedule for hearing the case. (Black, Harlan, and Stewart dissenting.) The Attorney General had accomplished what he set out to do—to obtain a speedy review of the constitutionality of the Voting Rights Act.

Just before the first elections following the passage of the Voting Rights Act, the Attorney General wrote individual letters to 14,000 election day officials. The idea that he should do this came from a lawyer in the Civil Rights Division.

Think of it. The Attorney General of the United States patiently explaining to local election officials the factors which would lead to his decision to utilize Federal observers.

On May 3, 1966, the first post-Voting Rights Act primary election arrived. Dallas County, Alabama, was the test county. I can’t begin to relate all the events that happened that day and thereafter, but they included the use of Federal observers to watch so-called “replacement clerks,” sent by the county judge (at 5:00 o’clock in the morning) to certain critical polling places; the impounding of six boxes by the Dallas County Democratic Executive Committee; a suit by the United States to compel the local officials to count the votes in the six boxes; and the decision of the Federal District Court that the votes in the six black boxes should be counted—thus changing the outcome of a critical election. On the strength of the votes of the black citizens, the candidate who was respected by the blacks and who sought black support was elected. Lawyers from the Justice Department, Civil Rights Division, again contributed their skills in bringing this about.

Let me give you one final example of what can happen when the three co-equal branches of the Federal Government work together.

1966 was the summer of the Meredith March. September brought another escalation of the drive to desegregate public schools in Louisiana, Mississippi, and Alabama. Two years earlier, Congress had enacted the Civil Rights Act of 1964. Under this statute, Congress had declared that it was unlawful for a state to segregate its public schools, and had authorized the Attorney General to commence injunctive action to “materially further the orderly achievement of desegregation in public education.”

On September 12, 1966, a bad situation developed in Grenada, Mississippi. Grenada was half way between Memphis and Jackson, 12,000 population. Grenada was rural Mississippi, hill country, not delta. Grenada’s population was half white, half black, but totally segregated. Public schools had opened that morning. For the first time, black children tried to enter the all-white school and were attacked by a crowd of white men.

I already knew Grenada. In June of 1966 I had accompanied the Meredith March through Grenada. James Meredith was the Mississippi ex-serviceman who had desegregated the University of Mississippi. Eight days before, on the first day of his march through Mississippi, Meredith had been shot. He was hospitalized, but national civil rights leaders rushed to Memphis to pick up the march and the march continued. By the time the march had reached Grenada, it had really picked up steam. Guarded by 40 or 50 Mississippi State troopers, accompanied by members of the FBI and the Division, national black leaders had returned to Mississippi to declare their independence.

I remember watching 400 or 500 marchers move into the town square. A black student from Michigan, Robert Green, stuck an American flag on a monument of the Confederate soldier and told the crowd that, “We’re tired of rebel flags.
This is the flag we want to see.” The blacks marched on the Grenada court house, where they desegregated the washrooms, and, then, at a meeting in the court room demanded of county officials adequate registration facilities. Later, there were speeches, songs, night marches. Hundreds of white Mississippians glared at the march, but, in that totally segregated city, there was no violence.

On July 18, a month after the march, the Federal Government brought a school desegregation suit against the Grenada School District. On August 26 the Federal District Court for the Northern District of Mississippi ordered the Grenada schools to operate on a completely racially non-discriminatory basis. Prior to the opening of school, 204 black children registered for the formerly all-white schools; 89 at John Randall High School, and 115 at Lizzie Horn Elementary, which adjoined the high school.

On September 12, when the black children arrived at school, many were attacked by a crowd of white men armed with ax handles, chains, sticks. The Grenada Police Chief and the Sheriff of Grenada County, along with deputy sheriffs and police officers were on the scene. They did nothing to stop the attack. Fifteen children were injured, several seriously.

In Washington we received an immediate report. We were over our heads in school desegregation problems. Our legal manpower resources were very thin, but I sent a lawyer to Grenada to get the facts. That night another lawyer and I flew to Memphis. We arrived about 11:00 p.m., and drove to Grenada, Mississippi.

At 7:00 a.m. the next morning we started to take affidavits from eyewitnesses to the violence. We brought the affidavits to Oxford. The United States filed suit that afternoon in the Federal District Court for Northern Mississippi against the local law enforcement officials. The Government secured a temporary restraining order from Federal Judge Clayton at 9:30 p.m. that evening.

A hearing was held on September 15 and September 16. In preparing for the hearing, Division lawyers had located an eyewitness to a racial incident at a high school football game held the Friday before school opened. The testimony of this witness proved without doubt that the local law enforcement officials should have known there were going to be high risks for the black kids when they tried to desegregate the public schools. At the close of the hearing, the Federal District Judge entered an order against the Sheriff and the Police Chief and their deputies, requiring them to maintain order, including an order directing each of them to develop a plan to maintain order and a chain of command for execution of that plan, including establishing liaison with the Governor, the State Commissioner of Public Safety, and the State Highway Patrol.

Thereafter order was maintained in Grenada, Mississippi, and black children attended the formerly all-white schools.

I have tried to show how important it is that the three co-equal branches of the Federal Government function together, each in its own sphere of power, if the Federal Government is to function effectively. The Constitution provided for a comprehensive system of government. As Mr. Justice Jackson once said:

While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.

I have tried to urge you to study the legal techniques that lawyers can use to make our system function and to strengthen the reciprocity Mr. Justice Jackson spoke of.

I have tried to stress the importance of the role of Congress. I have no question that the Congress of the United States can meet its responsibilities as a component part of a comprehensive system of government. I know the Congress can responsibly exercise its power. I witnessed Congress act last year during the Impeachment Inquiry.

In January, 1974, when there was a public debate over the direction in which the Committee on the Judiciary should proceed with its Impeachment Inquiry many lawyers said the Committee should immediately ask the President for the tapes.

During January the Committee considered carefully this question. Finally, after the Committee had fully debated the question, it decided first to secure clear authorization from the entire
House of Representatives for the Judiciary Committee with subpoena power to investigate fully and completely whether the House of Representatives should exercise its constitutional power of impeachment. The Committee concluded that the matter of first necessity was to firmly establish the legitimacy of the inquiry; that a proceeding to consider the possible removal of the President of the United States should not be launched without the greatest respect for the dignity and tradition of our basic institutions—the Presidency and the Congress of the United States.

On February 6, 1974, Chairman Rodino went to the well of the House to ask his colleagues for approval of such a resolution.

I will never forget that day. I was on the floor of the House with the Chairman when he was recognized by the Speaker. The House of Representatives is not the most attentive audience in the world. Representatives come and go, mingle in small groups, whisper, laugh, read, as government business proceeds. Hardly anyone listened when Chairman Rodino began to speak. As is the custom, pages distributed his speech to the press. Gradually, more and more people began to listen. His speech was full of history, serious, restrained, business-like, straightforward. By the time the Chairman neared the end, the entire House, the galleries, were listening.

I can still hear what he said:

"For almost 200 years Americans have undergone the stress of preserving their freedom and the Constitution that protects it. It is our turn now.

"We are going to work expeditiously and fairly. When we have completed our inquiry, whatever the result, we will make our recommendations to the House. We will do so as soon as we can, consistent with principles of fairness and completeness.

"Whatever the result, whatever we learn or conclude, let us now proceed with such care and decency and thoroughness and honor that the vast majority of the American people and their children after them will say, that was the right course, there was no other way."

The House then voted 410–4 to authorize the Inquiry. No one can measure the impact of that event, but I believe that the House of Representatives had launched its Judiciary Committee on a course that would prove to most Americans, now and in the future, that our constitutional process was reliable.

As a lawyer, I want non-lawyers to have confidence in the law. I want non-lawyers to believe that our constitutional government is reliable.

Lawyers can't solve the world's problems. But lawyers can, with training and with effort, give to all Americans confidence that our government works. Lawyers can do this by helping as craftsmen to make it work. But first, as students, you must study and think about the ingredients and requirements for a workable government.

As you begin your studies remember what Chairman Rodino said more than once during the Impeachment proceeding:

"The real security of our nation lies in the integrity of our institutions and in the trust and informed confidence of our people."

Finally, remember that all the members of the Committee on the Judiciary were lawyers.